

1882-045 Chancery Causes William M. Pennington & vs. Levi Pennington &  
Lee Co.

CA-Debt

T-Property



inquired

To the Honorable John M. Johnston, Judge of the  
Circuit Court of Lee County

The Bill of Complaint  
of William M. and Edwards Pennington of said County, would  
respectfully represent to your Honor, that on the 17 day of  
January 1861 your Orators, and one Elijah Pennington  
of said County, executed to one Levi & Tobias Pennington, ~~admirors~~  
of Edward Pennington deceased, their certain writing obligatory  
for the sum of six hundred & sixty nine Dollars & ninety four  
cents, due & payable the 21st of January 1861. This obligation  
was joint upon its face, but your Orators allege, and well  
be able to show in proof, that said note was executed for  
the entire benefit of the said Elijah Pennington, your  
Orators, co-obligor, as shown by said note, and your Orators  
were each, only in truth, & fact, the sureties of the said  
Elijah Pennington, and never received any consideration, other  
than sureties for the same, and never derived, or expected  
to derive, any benefit from the transaction which superinduced  
the execution of said note as aforesaid. On the - day  
of - 1867, the said Levi Pennington, as the survivor of his said  
Co-administrator, Tobias Pennington, instituted his action of debt  
on said note, in the County Court of said County, and at the  
quarterly term of said Court in August, of the year aforesaid,  
obtained a judgement at law, against your Orators, and the  
said Elijah Pennington for the said sum of \$669.24, with  
interest thereon from the 21st January 1861, until paid, and the  
costs. A copy of this judgement, is herewith filed, as part of this  
Bill, marked (c4). This judgement is still unpaid, except  
\$4 also twenty dollars paid as interest in the fall of 1868,  
an instalment of interest, made in the fall of 1867 of \$40.75, and some  
other payments herein after noticed. At the time this judgement  
was rendered, the said Elijah Pennington owned, and still owns  
valuable real estate, lying in said County, estimated in value  
from five to six thousand Dollars, and your Orators own  
real estate at least of equal value, subject to said <sup>judgment</sup> lien,  
which will appear by decors of record in the said County Court,  
Clerks Office.

On the - day of December 1868, the said Elijah



Pennington made application for the benefit of the Bankrupt Law of Mar 2<sup>d</sup> 1867, and obtained his certificate in Bankruptcy, ~~but never applied for discharge~~ and he has ~~not~~, as your Orators are informed, ~~not~~ obtained his final discharge thereon. Your Orators are informed and believe, & therefore allege that the said Bankrupt embraced in his schedule of debts he owed, the debt, for which said judgment was rendered, and in his inventory, the several tracts of land, comprising his real estate aforesaid, and that none of his creditors have proved their debts in the Bankrupt Court, and hence said lands may be sold, by his assignee in Bankruptcy, and the proceeds returned to the Bankrupt, to the great detriment of your Orators rights & equities, as the sureties of the said Bankrupt, as before stated. The said Levi Pennington, administrator &c. as aforesaid, and Plaintiff in said <sup>judgment</sup> ~~case~~, has not, as your Orators allege, although he received a notice in Bankruptcy, in said case, taken any steps to enable him to receive his share of the dividend in the Bankrupt Court, or to enforce his judgment lien, <sup>said Court, or in</sup> ~~in~~ <sup>over</sup> state Courts, as in good conscience he was bound to do, in order to relieve your Orators, who he knows to be only sureties, of the burden of said judgment, so far as he could, without jeopardizing his own rights, as said Administrator; - but he has contented himself, by exercising extraordinary vigilance, to obtain any undue advantage he might gain, by an omission on the part of your Orators, to comply technically & strictly, with the provisions of the Military orders of the day in relation to the payment of interest, on debts barred as this was by the Stay-Law; and his efforts were attended with signal success, for while the existence of the orders requiring interest to be paid, by the 1st Court last, & then by the 30<sup>th</sup> Sept, were wholly unknown to your Orators, he without any notice or demand for said interest, had an execution issued for the principal, interest & costs of the said judgment, against your Orators only, without any scire-facias, or suggestion on the record, showing why the said Elijah Pennington, a party

deft to the judgment, was omitted in the execution, which was levied on nearly all the personal property of your Orators, and was about to be exposed to sale, under such circumstances as must have resulted in a ruinous sacrifice. This execution was quashed by the County Court, at its ~~first~~ <sup>since that</sup> November Term, and the sum of \$97.00 has been paid the Pltff on said debt, besides, the one year interest, required by the last Military order, together with the costs of said suit to obtain said judgment; and yet the said Levi Pennington, to harass these complainants with further vexatious litigation, has, since said Nov Term, issued and placed in the hands of Mr. W. Sage, Sheriff of said County another execution, upon said judgment, against your Orators, ~~and~~ <sup>for</sup> the said Elijah Pennington, the Bankrupt, in direct violation of the Bankrupt Law, which, <sup>your</sup> Orators are advised vitiates the whole execution, and no order verbal, or written, which the Pltff therein may give, as to its not being levied upon the property of the Bankrupt, can heal the Variance between the judgment & execution, which must exist, when it becomes apparent that it unlawfully issued, against the Bankrupt, by the provisions of a law paramount to state authority. Your Orators are advised & hence aver, that they are entitled by scire-facias, or suggestion to controvert if they choose, the facts of Bankruptcy of their principal, and the record at least, to be so amended that their rights in future may be secure, and not put in jeopardy, by any Variance between the judgment & fieri-facias issued thereon, and for these reasons, among others, that said proceedings on said execution should be prohibited, by the intervention of a Court of Equity.

Your Orators will here state, that they are fully aware, that there are other prior judgments, against their principal, to the one herein in question, in one of which your Orators are involved in like manner as in this one, which judgments are due other parties; but your Orators are fully persuaded, and hence aver, that the real estate of their principal in ordinary times, is ample to discharge said prior judgments, and the judgment in question in this Bill, without the aid of



4) Your Orators, real, or personal estate and hence Your Orators conceive it, to be their interest, that the judgement Lien, of the Creditor, Levi Penington, which is preserved by the Bankrupt Law, be enforced in the state Court, as the Bankrupt Law, requires a party coming into that Court, to waive any prior existing lien, and to share pro rata in the general fund, which might be absorbed to a great extent, by those having no lien, in the event all the Creditors should come in & prove their debts; but this does not, as Your Orators are advised, & therefore allege, relieve the said Levi Penington, from the guilt he has incurred, by violating the equitable obligation, that existed, between him, & Your Orators as sureties, in said debt, by wilfully omitting, to do in the premises, what said equity, enjoined upon <sup>him</sup>, to save harmless if he could without detriment to his own rights, the sureties who according to the original intention of all concerned, understood to pay, only in the event, that the principal failed to discharge the debt. And now since the said Creditor, Levi Penington may yet do, what he has heretofore omitted to do, without any expense, risk, or unnecessary delay, and in that way save Your Orators, as said sureties, from great injury, and irreparable loss, mischief, and ruin, which they ever, must result to them, from his present course;— and Your Orators being without an adequate remedy at law, & relievable in Equity their prayer therefore is, that, the said Levi Penington, ~~Edijah Penington~~, & ~~Wm. M. Sage~~, Sheriff, be made parties Defs to this Bill, and they be required to answer each and every allegation thereof, fully & truly upon oath, and that Your Honor will grant an injunction, to stay all proceedings at law, until this cause is heard upon its merits, and such relief is administered in Equity, as that Court is at liberty to confer, in view of the rules & principles that govern its action, upon such state of facts as are herein set forth;— and that upon a hearing Your Honor will render a decree to compel the Creditor, the said Levi Penington, to enforce, in our state Court, his judgement Lien, upon the lands of the principal, the said Edijah Penington; or that he permit Your Orators, to do so in his name; or if it be competent, that Your Honor, render in this cause, such a decree as will, either subject the rents & profits, or the proceeds of the



— sale of the lands of the said Elijah Pennington, to the discharge of the judgement aforesaid, having regard to the priorities of other judgement Creditors of the said Elijah Pennington;— and that upon a final hearing your Honor will grant to your Orators, such general and special relief, as a Court of Equity can afford, and the equity of their case requires.

May proper process, issued directed &c, and as in duty your Orator will ever pray &c.

Done for Campbell

This day Wm. M. Pennington personally appeared before me, H. J. Morgan, deputy clerk of the Circuit Court of Lee County & made oath, that the facts in the foregoing Bill so far as made upon his own knowledge are true as far as made upon information derived from others, he believes them to be true. Given under my hand this the 25<sup>th</sup> day of November 1869.

Henry J. Morgan, D.C.



An injunction is awarded the Complainants according to the prayer of their within bill, to restrain the Defendants and each of them from further proceedings to collect the judgment in the bill mentioned until the further of the Circuit Court of Lee County;

But this injunction is suspended and shall not take effect, until and unless the Complainants, or one of them, or some one for them shall give before the Clerk of the County Court of said County bond with good security in the penalty of \$200.00 conditioned to pay the said judgment and all such costs and damages as may be awarded in case this injunction is dissolved

To the Clerk Circuit Ct  
Lee County

Thos. S. Hargest  
Dec 2<sup>d</sup> 1869

Wm & Edward Pennington

Bill

Lee Pennington & others

Complaint filed.

1870. Jan. Bill filed & costs

Feb. Mar-April & May - Costs.

June, July, Aug & Sept "

Oct., Nov. & Dec "

1871 Jan. Continued

Feb. March Continued

April & May "

June, July & Aug. Continued

Sept. Oct. & Nov. "

1872 Jan. Feb. & March Continued

April, May & June Continued

July, Aug & Sept Continued

Oct. Nov. & Dec. Continued

1873. Costs this year.

1874. Costs this year.

1875. Costs this year.

1876. Costs this year.

1877. Costs this year.

1878. Costs this year.

1879. Costs this year.

1880. Costs this year.

1881. Costs to this date.

Costs to March 1882.

1882. April, Continued by Wm.

J.M. W. 663 to

Watt sec \$159

paid by Wm M.

Pennington

Aug 16. 1882

old 24.

old 25.